

May 27, 2016

Mark J. Langer, Esq.
Clerk, United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W., Room 5423
Washington, DC 20001-2866

Re: McKenzie-Willamette Regional Medical Center Associates, LLC,
d/b/a McKenzie-Willamette Medical Center v. NLRB
Case Nos. 15-1125 and 15-1171

Dear Mr. Langer:

In accordance with FRAP 28(j), the Petitioner / Cross-Respondent (“Hospital”) hereby responds to the Respondent / Cross-Applicant’s (“Board”) supplemental citation to NLRB v. Bluefield Hospital Co., LLC, ___ F.3d ___, 2016 WL 2609605 (4th Cir. 2016) for the proposition that this Court, similar to the Fourth Circuit, should rely upon the proffered Minute of Board Action (“Board Minute”) as substantial evidence that Mr. Hooks was appointed as Regional Director for Region 19 on December 22, 2011.

Bluefield analyzed whether a different Regional Director was appointed during a time in which the Board possessed a quorum; however, the Court was not presented with the due process violations that pervade the Board’s handling of the instant case, notably, permitting the General Counsel’s post-hearing “cherry picking” of supportive agency documents while continuously denying the Hospital equal opportunity to develop its own evidence on a fundamental issue.

The Board’s attempt to analogize Bluefield fails to recognize not only the distinctive controversy by which Mr. Hooks’ appointment has been presented to this Court, but its own errors in denying the Hospital a corresponding opportunity following the closure of the record to pursue and present evidence of its own on the factual dispute related to Mr. Hooks’ appointment. See PB, page 29. The Board’s evidentiary rulings are not questions of fact for which the agency must have substantial supporting evidence in the record, but rather, actions reviewed for any abuse of discretion. See Veritas Health Services, Inc. v. NLRB, 671 F.3d 1267, 1273

(D.C. Cir. 2012). Therefore, the Board's citation to Bluefield, where the Court simply assessed whether there was substantial evidence supporting the Board's findings, is entirely irrelevant to this Court's review of the procedural machinations that took place while the instant proceedings were before the agency.

Sincerely,

/s/ _____

Bryan T. Carmody
Attorney for Petitioner / Cross-Respondent